

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20553**

In the Matter of)	
)	CC Docket No. 98-170
)	
Truth-in-Billing and Billing Format)	CG Docket No. 04-208
National Association of State Utility Consumer)	
Advocates' Petition for Declaratory Ruling)	
Regarding Monthly Line Items and Surcharges)	
Imposed by Telecommunications Carriers)	
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**REPLY COMMENTS OF THE
TELECOMMUNICATIONS RESEARCH AND ACTION CENTER**

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I. SUMMARY

The Telecommunications Research and Action Center (TRAC) submits these Reply Comments in support of the National Association of State Utility Consumer Advocates (NASUCA) petition to the Federal Communications Commission (FCC) for a declaratory ruling regarding monthly line items and surcharges imposed by telecommunications carriers. TRAC recommends that the FCC prohibit telecommunications carriers from advertising their rates to the public in such a manner as to not fully disclose to consumers the true financial cost of the service including the additional surcharges. TRAC shares NASUCA's view that the carriers should be able to recover important operating and regulatory costs. However, these operating costs should not be added as line-item fees after the consumer has committed to a distorted or incomplete price plan. It is TRAC's contention that selected telecommunications carriers are participating in a "bait and switch" operation, listing one set of lower prices to lure customers in, and presenting them with a higher total bill that incorporates surcharges and regulatory fees. TRAC urges the FCC to mandate that all telecommunication carriers' advertisements present their actual rates incorporating these additional costs of doing business. TRAC submits that the FCC should declare those carrier's current practice of not advertising up front and in full to be in violation of Section 201 of the Communications Act of 1934 for the

reasons that these practices are: (1) misleading and deceptive, (2) unreasonable and unjust and (3) anti-consumer in nature.¹

II. INTRODUCTION

The Telecommunications Research & Action Center (TRAC) was founded in 1983 to promote and advocate for the interests of residential telecommunications customers. TRAC is a non-profit, membership organization based in Washington, DC and for over 20 years has been conducting studies and publishing charts to aid consumers in choosing the correct and most efficient service for their calling needs. TRAC has advocated on behalf of consumers to such agencies as the FCC and the Federal Trade Commission (FTC) on such issues as SPAM, broadband deployment and Universal Service. Consistent with its role as a consumer advocacy organization, TRAC seeks to keep consumers informed about telephone service rates and industry practices and has time and again called upon the FCC to safeguard the interests of telecommunications consumers.

III. REGULATORY AUTHORITY

The FCC has the jurisdiction and the responsibility to expedite the prevention of unfair and unreasonable marketing practices. The FCC has the jurisdiction under section 201 (b) to discourage fraudulent and deceptive telemarketing as well as to

¹ 47 U.S.C. § 201.

curtail the advertising practices of carriers as their charges are not just and reasonably simply in the respect that they are not advertised accurately.²

Section 201 (b) of the 1934 Communication's Act states:

All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.

Many of the surcharges added to selected carrier bills for local and long distance service appear to be in direct violation of Section 201 (b). Currently, only three of the surcharges on phone bills are capped by the FCC: (1) The 8.9 percent Universal Service Fee which pays for affordable telecommunications for low income and rural customers, (2) A \$6 federal subscriber line charge for local carriers to recover the cost of connecting to the local network, and (3) A 23-cent fee to allow customers to keep the same number when switching local phone companies, i.e., number portability charges.³ Several common carriers such as AT&T have taken advantage of the more lenient nature of these rules by adding an assessment fees that are not mentioned in their advertisements.⁴ Also, many surcharges are characterized as government mandated fees when in actuality the fees go to the company and not to the government. While these fees may ultimately

² *Business Discount Plan, Inc.* 14 FCC Rcd 340, 355-358 (1998).

³ Richard J. Dalton Jr., *Phone Companies Dial for Dollars Squeezed Profits lead to higher fees for Consumers*, *Newsday*, Inc. June 8, 2003. The article cites an FCC spokesman that phone companies are not required to pass on the fees to consumers, stating "We give the carriers flexibility if they want to put them in their rates, as they have prior to the '96 [Telecommunications Act]."

⁴ In 2003, AT&T introduced its "Regulatory Assessment Fee of 99 cents per month per residential telephone line. The notice read: Beginning on July 1, 2003, your bill will include a 99 cent per month Regulatory Assessment Fee. **This fee will help AT&T recover the costs associated with interstate access charges, property taxes, and the expenses associated with regulatory proceedings and compliance.** This fee applies for each month you have any AT&T charge on your bill. This fee is not a tax or charge required by the government. <http://www.consumer.att.com/reg/index.html> (emphasis added). This fee is not included in AT&T's promotional price plans.

pay for the companies' regulatory compliance, something that is fully permissible under law, the discrepancy lies in the fact that as a result of these added fees the phone bill the consumer receives is roughly 20% higher than the advertised rate.⁵ Customers should be made aware of this type of advertising and billing practices so that they do not fall victim to hidden fees being imposed on their phone bill after they consent to misleading, low-rate plans.

In addition, to Section 201 (b), 47 C.F.R. 64.2401 of the FCC's Truth-In-Billing rules require that a telephone company's bill must: (1) be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered; (2) identify the service provider associated with each charge; (3) clearly and conspicuously identify any change in service provider; (4) contain full and non-misleading descriptions of charges; (5) identify those charges for which failure to pay will not result in disconnection of the customer's basic local service; and (6) provide a toll-free number for customers to call in order to lodge a complaint or obtain information.⁶ The FCC has also determined that all telecommunications providers should use standard labels on bills when referring to line item charges relating to federal regulatory action, such as universal service fees, subscriber line charges, and local number portability charges. Currently the labels being implemented by some companies such as Sprint and AT&T are not standardized. Labels and line item charges vary a great deal from company to company making it difficult for the consumer to accomplish a true price comparison.

⁵ *Id.*

⁶ <http://ftp.fcc.gov/cgb/policy/truthinbill.html>

IV. A SAMPLING OF TELECOMMUNICATIONS CARRIERS ENGAGED IN UNFAIR TRUTH-IN-BILLING PRACTICES

Several telecommunications companies adhere to the practice of advertising low telephone rates plays, but present customers with a bills that reflect considerably higher rates once surcharges are added. These surcharges are characterized on the bill in several different ways, put under such subheadings as: Regulatory Fees, Miscellaneous Charges and Taxes, and USA Regulatory Obligations and Fees. As selected telecommunications companies work to remain competitive with one another, the use of hidden and misleading charges has permeated the bills of several leading carriers such as AT&T, MCI, Sprint, and Nextel. TRAC recommends that the practice of advertising extremely low rates to lure consumers be curtailed and the participating companies should not be allowed to advertise inaccurate rates.

A. AT&T

On July 1, 2003 AT&T enacted its so-called “Regulatory Assessment Fee” of 99 cents per month, per residential phone line. This fee is deceptive and misleading. The “fee” suggests it is a type of government imposed regulatory fee when in fact this fee is a cost recovery mechanism that should be reflected in the carrier's advertised rates and not in its fine print. The rate is a deceptive marketing tool being used so that AT&T can increase its profits without raising its advertised rates. Not only are consumers being affected by AT&T’s practice but other competitors who may be compelled to advertise artificially low rates so as to not be priced out of the marketplace.

AT&T's Regulatory Fee is located under the "Miscellaneous Charges and Taxes" portion of the bill. AT&T has described the fee as, "expenses associated with regulatory proceedings..." Even though AT&T does explicitly state that this fee is not a tax required by the government that is not enough to properly inform the customer of the true nature of the fee. As is stipulated in the Truth-in-Billing rules adopted by the Commission in order to improve consumers' understanding of their telephone bills, it is simply not acceptable that the consumer be in any way confused about where charges are derived from.

B. MCI

Current FCC guidelines stipulate that consumers should be easily able to understand bills and require specifically that: (1) Bills should be organized and readable in a clear and conspicuous manner, (2) Bills should contain full non-misleading descriptions of all charges, and (3) Bills should clearly and conspicuously disclose all information necessary for consumers to make inquiries about charges in their bills.⁷

The following example is illustrative of the fact that certain carriers seem to find the reward of generating fee income exceeds the risk of FCC enforcement action. The FCC rules state that each proposed fee that a common carrier includes in its rates must be stated in a clear and conspicuous manner. In January 1998, MCI violated this practice and billed customers a charge called a "National Access Fee" which it placed in the "Taxes and Surcharge" portion of the bill. MCI claimed this fee was a tax or charge that the FCC required. In an enforcement action, it was held by the FCC that this fee was neither a tax nor any other government mandated charge. The FCC did not require MCI

⁷ http://www.fcc.gov/Bureaus/Common_Carrier/Notices/1998/fcc9232.txt.

to collect this charge from its customers. MCI agreed in settling the proceeding that in the future it would cease from ; (1) placing this type of fee under the “Taxes and Surcharge” portion of their bill, (2) from using the term “National Access Fee” or any similar terms that would mislead the customer to believe that the fee was mandated by the government, (3) from representing that this fee is authorized or requiring by the FCC or any other governmental agency when it is not, and (4) from representing to customers that MCI is authorized or required by the FCC to collect this charge when it is not.⁸

Seemingly unfettered by the FCC’s action, beginning on February 1, 2003, MCI initiated a Carrier Cost Recovery Charge. This new charge was added to existing state-to-state and international charges and in addition to monthly service fees for bundled local and long distance plans such as Neighborhood service. MCI explains this cost as a monthly surcharge in order to recover costs the Company incurs with regard to Telecommunications Relay Service, national number portability, and federal regulatory fees.⁹ While under the Telecommunications Act MCI is fully entitled to recover these costs, they should be factored into their advertised price and not “added” on after the consumer has committed to a plan at the publicized amount. TRAC contends that companies have the right to pass along the costs of complying with government regulations. However, they should not be hidden in such a way that the consumers are misled about the real cost of telecommunication services. MCI is the only company to charge this specific fee, however MCI is not the only telephone company to invent its

⁸ Mark Williams, *MCI to Change Billing Practices and Pay States \$1.3 Million*, Tennessee Division of Consumer Affairs, November 22, 1999. Tennessee Attorney General Paul G. Summers states in the article that it is misleading for companies to label a private company’s fee as a tax by the government.

⁹ http://consumer.mci.com/TheNeighborhood/res_local_service/jsps/join_plans.jsp

own unusual fee. Sprint, for instance, started adding on a 1 percent "Property Tax Recovery Charge" in 2001.¹⁰

C. Sprint and Nextel

In a 2002 Federal case involving Nextel West Corp., "Nextel" and Sprint Spectrum L.P., "Sprint," the two companies were sued for deceptive and misleading fees in their bills. Nextel imposed a \$1.55 Federal Programs Cost Recovery fee, which it placed under the heading, "Taxes, Fees and Assessments." Sprint imposed a "2% USA Regulatory Obligations and Fees" charge. The Nextel and Sprint fees were not taxes, nor were the fees mandated. The companies were under no federal obligation to impose the fees.

Sprint placed this fee under the category "Other Surcharges and Fees" which fell directly below a list of taxes under the heading "Taxes and Regulatory Charges."¹¹ Just as AT&T and MCI have done, Nextel and Sprint created the illusion that these fees were imposed by the government when in reality the companies kept the fees. Customers may or may not object to paying these charges when they discover what they are being used for; however these fees should certainly be much more readily identifiable before consumers agree to the service.

The ingenuity of the carriers in advertising low rates while adding misleading, government-sounding fees seems to have few limitations. TRAC asserts that the FCC's regulations to such as the Truth-in-Billing order are not being properly enforced. This is a clearly evident from the example of a Nextel monthly advertising plan priced at \$39.99.

¹⁰ Todd Wallack, *MCI Plans Additional Rate Hikes*, SFGATE.com, December 4, 2002. This article looks at MCI's proposed rate increases and how it will affect consumers who will not be made aware of the change.

¹¹ Jeremiah W. (Jay) Nixon v. Nextel West Corp and Sprint Spectrum L.P. (S.W. MO. Dec. 5, 2002) at 2.

The actual cost of this plan with the fees and taxes is \$45.53. This is 14% higher when fees and taxes are calculated into the price.¹² The FCC's authority must be upheld to insure consumer protection from these blatant acts of false advertising and deceptive billing practices.

V. CONSUMERS' ABILITY TO MAKE PRICE COMPARISONS IS INHIBITED BY CHARGES THAT ARE CONFUSING AND DECEPTIVE.

It has been argued by the United States Telecom Association (USTA) that a one-size fits all billing approach is both unnecessary and unreasonable and that consumers are generally aware that additional charges apply for telecommunications services.¹³ Further USTA contends that given the competitive nature of telecommunications, many consumers do their research before selecting any provider particularly when entering into a long term arrangement with a carrier. While this holds true in many consumer driven industries the telecommunications industry seems to be unique in that even a sophisticated consumer can do a great deal of research and never come to a correct conclusion about the price of their plan given the vagueness of terms and the lack of uniformity in the industry. For example, last month BellSouth Corporation adopted a little noticed by consumers' definition of "unlimited" for its BellSouth Unlimited and BellSouth Unlimited Talk plans. People on plans whose long distance

¹² *Discount Deceptive Tactics*, USA Today., May 21, 2003. This article addresses how mislabeling fees as taxes creates openings for anti-consumer abuses.

¹³ http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516283809

usage exceeds 5,000 minutes a month will pay an extra \$50 on their bill.¹⁴ Doing a great deal of research into one company's definition of unlimited would be of little use when accepting a BellSouth plan. A more uniform labeling scheme would enable the consumer to make a more educated choice when selecting a carrier and not be misled by an ad that includes what he/she perceives to be a universally accepted definition.

VI. CONCLUSION

The FCC has the regulatory authority to curtail the unfair advertising practices employed by many major telecommunication carriers under Section 201 (b) of the 1934 Communication's Act.¹⁵ TRAC has established in its sampling of companies (see *infra*. AT&T, MCI, Sprint, and Nextel) that consumers are being lured into plans based on artificially, low advertised rates and then presented with inflated bills that include misleading line-items and surcharges. These surcharges that are added to customers' bills are deceptively characterized as government imposed when in fact these surcharges are simply efforts by which companies recover operating costs. It is a standard business practice to recover operating costs by passing on these amounts to the consumer. TRAC contends, however, that these costs should be reflected in the rates that carriers advertise and not hidden in obscure and confusing fine print.

It is imperative that the FCC take a proactive role in enforcing the

¹⁴ Shawn Yong, *Phone Companies Raise Fees*. Wall Street Journal. July 22, 2004. This article looks at how carriers looking to make up for declines in their consumer operations are seeking new ways to harvest cash from consumers

¹⁵ 47 U.S.C. § 201.

Truth-In-Billing initiative intended to better standardize bills, so that consumers may conduct more accurate price comparisons amongst the different companies.¹⁶ Many new charges from AT&T, MCI and Sprint Corporation will appear in consumers' bills for the first time in coming weeks, some cloaked in tough to fathom terminology like "Mobile Termination" fees (an extra charge for calls to cell phones in foreign countries).¹⁷ Currently with the different labels being used, such as "Property Tax Recovery Charge" "Regulatory Assessment Fee" and the newly minted "Mobile Termination Fee" consumers will have a difficult if not impossible task of discerning which charges are truly government mandated and common among all carriers and which charges are self imposed by the individual companies.

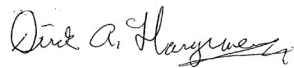
Deceptive and misleading billing practices must be stopped and the rights of consumers to have accurate information upon which to base their decision must be better enforced. Therefore, TRAC joins other consumer advocates in urging the FCC to approve NASUCA's petition for declaratory ruling regarding monthly line items and surcharges imposed by telecommunications carriers. The FCC has the authority and our nation's consumers deserve no less than to be presented with truth in billing.

¹⁶ <http://ftp.fcc.gov/cgb/policy/truthinbill.html>

¹⁷ Shawn Yong, *Phone Companies Raise Fees*. Wall Street Journal. July 22, 2004. This article looks at how carriers looking to make up for declines in their consumer operations are seeking new ways to harvest cash from consumers.

Dated: July 27, 2004

Respectfully Submitted,

A handwritten signature in cursive script, reading "Dirck A. Hargraves".

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